IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.30667 OF 2002

A. Laxman Kini
Co-operative Officer
(Compulsory retired)
Indian Overseas Bank,
11, 7th Main, Tiruvaluvar Nagar,
Chennai 600 118. .. Petitioner

-Vs-

1. Indian Overseas Bank,
rep. by Chairman and Managing
Director, having office
at No.763, Anna Salai,
Chennai 600 002.

2. The Chief Officer,
Indian Overseas Bank,
Regional Office,
Surya Lok Complex Gun Foundry,
Hyderabad 500 001.

3. The Executive Director,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai 600 002.

4. The Deputy General Manager,
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai 600 002.

5. General Manager
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai 600 002. ..Respondents

Petition filed under Article 226 of the Constitution of India for the

issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V. Dhanabalan

For Respondents : Mr.Jayesh B. Dolia for
M/s. Aiyar & Dolia

:J U D G M E N T

The petitioner has filed this writ petition challenging the order passed by the disciplinary authority of the Indian Overseas Bank inflicting the punishment of compulsory retirement, which has been confirmed in appeal by the appellate authority.

2. The petitioner was working as Deputy Manager at Somnathpur branch of Indian Overseas Branch within Balasore district in the State of Orissa during 1996. On 12.7.1996, as the Branch Manager had gone to the Regional Office to attend a meeting, the petitioner was in charge of the branch. During that time, the petitioner refused to grant a demand loan of Rs.38,000/- to one Mr.R. Panda and his wife. On the other hand, on the very same day, the petitioner took cash of Rs.20,00 0/- with a view to deposit the same in Balasore branch, but as there was bandh in Balasore, the amount was not deposited on the said day and the amount remained with the petitioner and was deposited with the State bank at Balasore on the next day. On the basis of such allegations, charge-sheet was issued against the petitioner, who filed a reply denying the allegations. An enquiry officer was appointed and certain witnesses were examined. Ultimately, the enquiry was concluded and the enquiry officer found guilty of the charges levelled against the petitioner. A further show cause notice was issued and thereafter, the disciplinary authority inflicted the punishment of compulsory retirement which has been confirmed in appeal.

3. The petitioner has challenged such a punishment on several grounds. It is contended that the enquiry was held ex-parte and sufficient opportunity had not been given to the petitioner.

4. On going through the materials on record, it appears that during the departmental proceedings, witnesses were examined and the petitioner himself has participated in the enquiry. Subsequently, during the stage of adducing rebuttal evidence, the petitioner had remained absent and an adjournment had been given. Again on 10.2.1999, the petitioner had remained absent. It appears that the petitioner had sent a medical certificate indicating that he was suffering from hepatitis. Subsequently, the petitioner had also filed an application on 16.2.1999 to set aside the ex-parte enquiry and give him an opportunity of hearing.

5. It is true that mere filing of a medical certificate would not automatically result in adjournment of any quasi-judicial proceeding, like

a departmental enquiry. However, the medical certificate, which has been filed, indicates that it has been issued by the competent authority, and therefore, in my opinion such certificate could have been given credence, particularly when soon after the petitioner had filed another application for giving him opportunity to adduce evidence. It is true that enquiry had been quite protracted. However, since a major punishment was subsequently inflicted, it would be more appropriate on the part of the respondents to give further opportunity to the petitioner.

6. Learned counsel for the petitioner has also submitted that even assuming that delinquency of the petitioner has been established, the punishment of compulsory retirement appears to be grossly disproportionate, particularly when no loss had been caused to the bank nor there is any evidence of criminal misappropriation of the amount. Since I am of the opinion that further opportunity should be afforded to the petitioner to adduce evidence on his behalf and the matter is to be considered afresh, the question of appropriate punishment can also be decided at that stage.

7. For the aforesaid reasons, the orders passed by the appellate authority and the disciplinary authority are set aside and the matter is relegated to the stage on which it was on 10.2.1999. The very same enquiry officer, if still available, may proceed with the enquiry from that stage or another enquiry officer may continue with the proceedings from the stage as on 10.2.1999. The petitioner should be given an opportunity to adduce evidence on his behalf and thereafter the matter should be considered in accordance with law.

8. Accordingly, the writ petition is allowed to the extent indicated. There would be no order as to costs.

06-11-2003
Index : Yes
Internet : Yes

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To

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